

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

JOE CUMMINGS BONNER III,

Plaintiff,

v.

REBECCA L. CLAYS *et al.*,

Defendants.

Case No. C05-5431RBL

REPORT AND  
RECOMMENDATION

**NOTED FOR:  
March 24<sup>th</sup>, 2006**

This 42 U.S.C. § 1983 Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. §§ 636(b)(1)(A) and 636(b)(1)(B) and Local Magistrates' Rules MJR 1, MJR 3, and MJR 4. There are four named defendants in this action. (Dkt. # 6). The named defendants are Rebecca L. Clays, Jayme Rudloff, Tabra Zander, and Thomas Walsh. Mr. Walsh is represented by separate counsel from the other defendants and has filed a motion to dismiss. (Dkt. # 26). The allegations against Mr. Walsh are separate from the allegations against the remaining defendants. (Dkt. # 6, page 3). Plaintiff alleges Mr. Walsh is a medical provider at the Stafford Creek Corrections Center and that Mr. Walsh did not come to see him in spite of several requests for treatment and threats of suicide. Plaintiff alleges he then attempted to commit suicide.

Defendant Walsh contends his failure to see plaintiff would be covered as a grievable act of an employee and plaintiff has a duty to exhaust the grievance system before filing this action. (Dkt. # 26).

1 Plaintiff has not responded to the motion. The other defendants do not oppose the motion and have filed a  
2 separate motion to dismiss that is noted for February 24<sup>th</sup>, 2006. (Dkt. # 30). As the claims against defendant  
3 Walsh are separate and distinct from the claims against the other defendants the court will consider the motions  
4 separately.

5 Plaintiff's failure to respond to the motion is significant. Under Local Rule 7, failure to respond to a  
6 motion may be deemed by the court as a admission that the motion has merit. The factual contentions raised by  
7 defendant Walsh have not been controverted and the court accepts that this defendants actions were grievable  
8 and plaintiff did not file a grievance.

#### 9 DISCUSSION

10 The Prison Litigation Reform Act ("PLRA") requires exhaustion of administrative remedies prior  
11 to filing a complaint in federal court. The relevant portion of the act states:

12 No action shall be brought with respect to prison conditions under section 1983 of this title,  
13 or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility  
until such administrative remedies as are available are exhausted.

14 42 U.S.C. § 1997e(a).

15 Here, plaintiff filed this action while incarcerated and the act applies to him. The United States  
16 Supreme Court determined that Congress enacted the provision in order to reduce the quantity and improve the  
17 quality of prisoner suits. Porter v. Nussle, 534 U.S. 516 (2002). By mandating exhaustion, Congress enabled  
18 corrections officials to address prisoner complaints internally. Where exhaustion was once discretionary, it is  
19 now mandatory. "All 'available' remedies must now be exhausted; those remedies need not meet federal  
20 standards, nor must they be 'plain, speedy, and effective.'" Porter v. Nussle, 534 U.S. 516 (2002) (quoting  
21 Booth v. Churner, 532 U.S. 731, 739 (2001)). The Porter Court ruled that "§ 1997e(a)'s exhaustion  
22 requirement applies to all prisoners seeking redress for prison circumstances or occurrences." Porter, 534 U.S.  
23 at 520.

24 Plaintiff has failed to exhaust available remedies prior to filing and this action. Accordingly, his claims  
25 against defendant Walsh should be **DISMISSED WITHOUT PREJUDICE**.

#### 26 CONCLUSION

27 The Court should **DISMISS WITHOUT PREJUDICE** all claims against defendant Walsh as  
28 plaintiff failed to exhaust available administrative remedies. Defendant Walsh should be dismissed from the

1 action. A proposed order and proposed judgment accompanies this Report and Recommendation.

2 Pursuant to 28 U.S.C. § 636(b)(1) and Rule 72(b) of the Federal rules of Civil Procedure, the parties  
3 shall have ten (10) days from service of this Report to file written objections. *See also* Fed. R. Civ. P. 6.  
4 Failure to file objections will result in a waiver of those objections for purposes of appeal. Thomas v. Arn, 474  
5 U.S. 140 (1985). Accommodating the time limit imposed by Rule 72(b), the clerk is directed to set the matter  
6 for consideration on **March 24<sup>th</sup>, 2006**, as noted in the caption.

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8 DATED this 21<sup>st</sup> day of February, 2006.

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13 Karen L. Strombom  
14 United States Magistrate Judge  
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